

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/083, 122	05/22/98	MAJEED	M P8064-8009

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HM22/0310

EXAMINER

OH, T

ART UNIT	PAPER NUMBER
1623	14

DATE MAILED: 03/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action	Application No. 09/083,122	Applicant(s) Majeed et al
	Examiner TAYLOR VICTOR OH	Group Art Unit 1623

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) expires 5 months from the mailing date of the final rejection.
- b) expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Feb 3, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- The proposed amendment(s):
 - will be entered upon filing of a Notice of Appeal and an Appeal Brief.
 - will not be entered because:
 - they raise new issues that would require further consideration and/or search. (See note below).
 - they raise the issue of new matter. (See note below).
 - they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

- Applicant's response has overcome the following rejection(s):

- Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See pages 2 -4.

- The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none

Claims objected to: none

Claims rejected: 1, 2, and 5-17

- The proposed drawing correction filed on _____ has has not been approved by the Examiner.

- Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

- Other

Art Unit: 1623

The remarks have been considered, but have not been persuasive.

The rejection of claims 1-2 and 5-17 under 35 USC 103(a) as unpatentable over Lewis (methods in Enzymology, vol. XIII, pp. 615-616, 1969) in view of Lowenstein (U.S. 3,764,692) is maintained as they were applied in the final rejection mailed 9-3-99.

Concerning the motivation to modify Lewis' process by directly extracting the Garcinia fruit with alcohol, instead of extracting Garcinia fruit rind with water first and then extracting the aqueous extract with alcohol, first of all, the Examiner wishes to point out that there is little difference between the Garcinia fruit and Garcinia fruit rind for the purpose of producing hydroxycitric acid; the former contains water, the latter has little water. Furthermore, the Lewis' process teaches that Garcinia fruit rind can be extracted with the extractive solvents such as water, alcohol, and acetone (see page 616, lines 21-22) with the intention of obtaining hydroxycitric acid. This leads us to conclude that the solvents such as water, alcohol, and acetone serve the same purpose.

Therefore, it would have been obvious for the skillful artisan in the art to have used the Garcinia fruit directly with Lewis' alcohol in place of Garcinia fruit rind so as to economize the cost of the process as well as to remove a unnecessary step such as drying out Garcinia fruit.

With respect to the failure to arrive at step(e), in which the extract is refluxed after the addition of KOH, by "merely reversing the order of steps" in Lewis' process as well as the absence of the teaching of the step (e), the Lewis' process does teach that "the acidic filtrate is

Art Unit: 1623

neutralized by cautious addition of 40% KOH, with careful stirring. " (see page 615, lines 27-28)

This indicates that the addition of 40% KOH to the extract generates an excessive heat, which is closely equivalent to the refluxing step(e).

Therefore, not only the teaching of the step (e), but also the arrival at the step (e) by the merely reversing the order of steps in a multi-step process is obvious to the skillful artisan in the art.

Furthermore, the merely reversing the order of steps in a multi-step process is not a patentable modification absent unexpected or unobvious results.

Regarding to unexpected advantage of yielding very stable potassium hydroxy citric acid at a higher purity than Lewis' process which requires an alcohol washing three times, the applicants did not show any unexpected results in comparison with Lewis' process. Furthermore, the applicants' arguments do not take the place of evidence.

Moreover, the long stability of the compound is naturally obtained as unique characteristics for evaluating the compound, not as the novelty of the invention.

The arguments after final rejection have been fully treated, but will not overcome the rejection as stated above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to T. Victor Oh whose telephone number is (703) 305-0809. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

Art Unit: 1623

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist , can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.


GARY GEIST
SUPERVISORY PATENT EXAMINER
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3/31/00